

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 703 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

and

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KARSHANBHAI R VAGHARI

Versus

STATE OF GUJ

Appearance:

MS BANNA S DUTTA for Appellant

MR KT DAVE APP for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

and

MR.JUSTICE A.L.DAVE

Date of decision: 13/12/2000

ORAL JUDGEMENT (Per : MISS JUSTICE R.M.DOSHIT)

This appeal arises of the judgment and order

dated 24th May, 1993, passed by the learned Additional Sessions Judge, Bharuch, in Sessions Case No. 50/92. The appellant before this court is the accused who has been convicted for offence punishable under section 302 IPC and has been sentenced with life imprisonment, and fine of Rs.250/-. In the event of default in making payment of the fine SI for 15 days has been imposed.

The incidence in question is alleged to have occurred on 4th December, 1991, at around 7-30 in the evening. It was alleged that on the said date in the evening when the deceased Shanabhai Ramabhai, his wife Divaliben and his son Gopal were sitting on the platform (Otla) in front of his house, the accused Karshanbhai came from his house with a knife and stabbed the deceased Shanabhai on the back. When his wife Divaliben and Gopal tried to save the deceased Shanabhai, they were pushed away and the deceased was given several knife blows on his back. The deceased Shanabhai died on the spot. The FIR was given by Divaliben the wife of the deceased Divaliben to the Police Inspector, Jambusar. It was stated that the accused Karshanbhai had borrowed a sum of Rs. 300/- from his uncle Chhanabhai at the intervention of the deceased Shanabhai. However, the accused Karshanbhai did not repay the loan amount. Thereupon the deceased Shanabhai who was the elder brother of the accused Karshanbhai scolded him and asked him to repay the amount borrowed by him. Feeling enraged, the accused Karshanbhai had on previous day cut off the electric wiring of the house of the deceased Shanabhai. Under the circumstances, the incident had occurred on account of previous enmity.

The only eye witnesses to the incidence are Divaliben the wife of the deceased and their son Gopal. Divaliben (PW-3) in her deposition has repeated what was stated in the complaint. She has stated that the accused had stabbed the deceased Shanabhai for some 5 to 6 times on his back and after he fell down, he pushed him away. The deceased had died on the spot. The evidence of Divaliben is also supported by the evidence of Gopal Shanabhai (PW-8). He too has stated that while the deceased Shanabhai was sitting on the platform out side his house (Otla), the accused Karshanbhai came running from his house and started stabbing Shanabhai on his back. Shanabhai fell down on the spot and died instantaneously. The evidence of the Medical Officer Dr. Narendrabhai Gunvantraai Joshi (PW-1) and the Postmortem Note (EX-10) prove that the deceased had received four

stab wounds, all on his back. The said stab wounds caused internal injuries tearing his left lung. The Medical Officer has opined that death was caused on account of - " Shock due to massive hemorrhage left side due to injury on left lung following external injury. " It is thus proved that the deceased Shanabhai died homicidal death on account of injury to his lung and excessive internal hemorrhage. On examination of the Panchnama of the scene of offence and the map (EX-8) we find that the house of the deceased Shanabhai and the accused Karshanbhai are diagonally opposite to each other, and on either side of the narrow lane. No blood stains have been found on the platform (Otla) of the house of the deceased Shanabhai. However, a blood spot has been found on the lane near the platform (Otla) of the house of the accused Karshanbhai. Some blood has also been found on the platform (Otla) of the house of the accused Karshanbhai and large blood spot has been found at the end of the lane near the Neem tree. 6 to 7 linear marks of tip of the knife are found on the wall along the said lane. Hence, it is evident that the deceased Shanabhai was not hit on the platform of his house (Otla) as alleged by the above referred eye witnesses. The prosecution case does not explain the presence of the blood stains in the narrow lane near the house of the accused Karshanbhai or on the platform of the house of the accused Karshanbhai, nor the blood spot at the end of the lane near the Neem tree. We are, therefore, of the view that the prosecution has suppressed the incidence as it really happened and has also suppressed the genesis or the origin of the incidence.

In our opinion, failure of the prosecution to bringforth the incidence as it really happened or to putforth the genesis or the origin of the incidence shall mar the prosecution case and the accused deserves the benefit of doubt. We accordingly grant the accused benefit of doubt and acquit him of the charge framed against him. The conviction of the accused and the sentence passed upon him are quashed and set aside.

The appeal is allowed. The judgment and the order of the learned trial Judge is quashed and set aside. The accused, unless is required to be detained in custody in some other case, be released. The muddamal articles be disposed of as directed by the learned trial Judge.

(MS R.M.DOSHIT J)

(A.L.Dave J)

JOSHI